

Section 10. APPEAL PROCESS

10.1 Appeal Request

An appeal is a request for a hearing before an Administrative Law Judge with the Family and Social Services Administration, Hearings and Appeals Section, or a contracted Administrative Law Judge designated by the Director of the Division of Disability, Aging, and Rehabilitative Services (DDARS). The purpose of an appeal is to determine whether a decision made by a Service Coordinator, a Targeted Case Manager, or the Office of Medicaid Policy and Planning Level of Care Unit, affecting the recipient/consumer, is correct. An appeal request must be in writing and forwarded to the proper hearing authority.

10.1.1 Definitions

- A Service Coordinator is an employee of the Bureau of Developmental Disabilities Services (BDDS) with the responsibility to perform various job functions related to the planning, coordination, and oversight of services for persons with a developmental disability.
- A Targeted Case Manager is a certified and approved individual chosen by an individual with developmental disabilities and/or the individual's family to coordinate the individual's services.
- Office of Medicaid Policy and Planning Level of Care Unit is an entity within the Family and Social Services Administration.

10.1.2 Appeal Regulations

Decisions made by a Service Coordinator, a Targeted Case Manager, or the Office of Medicaid Policy and Planning Level of Care Unit can be appealed. For actions regarding Medicaid services the appeal is conducted under 405 IAC 1.1-1 et seq. For actions regarding state funded Developmental Disabilities Services the appeal is conducted under I.C. 4-21.5, the Indiana Administrative Orders and Procedures Act (AOPA).

10.2 APPEAL TRACK FOR MEDICAID ACTIONS

The hearing authority for Medicaid actions under the DD Waiver is 405 IAC 1.1-1 et seq.

10.2.1 Written Request for Appeal

An individual (or representative) must make an appeal request in writing. The written appeal request must be submitted to the Family and Social Services Administration, Hearings and Appeals Section, 402 W. Washington Street, Room 392, Mail Stop 04, Indianapolis, Indiana 46204 . This appeal request will also be faxed to the Hearings and Appeals Section at (317) 232-4412.

10.2.2 Assistance in Exercising the Right to Appeal

Any applicant for services or any individual receiving services via the DD Waiver who is dissatisfied with an action may request a fair hearing. Any time an individual expresses a disagreement with any action taken, he/she must be verbally reminded of the right to request a fair hearing. Assistance is to be provided to the individual who is having difficulty in preparing the written request for an appeal.

The individual is to be informed that he/she may represent himself/herself at the hearing or be represented by an attorney, a relative, a friend, or any other spokesman of his/her choice. Information and referral services should also be provided to help the dissatisfied individual make use of any free legal services that are available in the community.

10.2.3 Appealable Actions

Under 405 IAC 1.1-1 et seq. appealable actions are issues relating to the waiting list; no Waiver slots being available; initial, annual, and periodic level of care determinations; both initial and annual plans of care including service plans and cost comparison budgets; termination of Waiver services; re-entry into the Waiver after termination; and Waiver transfers.

10.2.4 Group Appeals

Family and Social Services Administration, Hearings and Appeals Section, may respond to a series of requests for hearings by providing group hearings or similar questions or changes in federal or state law or regulation. Similarly, a group of individuals who wish

to appeal some aspect of policy may request to be heard as a group. If there is disagreement as to whether the issue is one of federal or state law or regulation or the facts of an appellant's personal situation, Hearings and Appeals will make the decision as to whether the appeal may be included in a group hearing.

The Administrative Law Judge may limit the discussion in a group hearing to the sole issue under appeal. When an appellant's request for a hearing involves additional issues to the one serving as the basis for the group hearing, the appeal will be handled individually. An appellant scheduled for a group hearing may choose to withdraw and be granted an individual hearing even if the grievance is limited to the sole issue involved in the group hearing.

Policies governing the conduct of individual hearings are pertinent to group hearings. Each appellant (or representative) will be given full opportunity to present the case (or have the case presented by a representative).

10.2.5 Time Limits for Requesting Appeals

Appeals are to be filed not later than thirty (30) days following the effective date of the action, or thirty (30) days following the date the notice of the decision was mailed (whichever is later).

10.2.6 Continuation of Benefits

The appellant is entitled to continue benefits after requesting a hearing only if the request is received prior to the effective date of the proposed action.

Once continued benefits are allowed, benefits are not to be reduced or terminated prior to receipt of the official hearing decision. If a new action is proposed for a different time period and the recipient does not request an appeal, the new action can take place even if the previous appeal is still continuing.

10.2.7 The Hearing Notice

The Family and Social Services Administration, Hearings and Appeals Section, sends a notice acknowledging the appeal. The notice is sent to all parties, which includes the individual (the representative), the Service Coordinator and/or the Case Manager.

The Office of Medicaid Policy and Planning Level of Care Unit would also be included in receiving a notice if they were involved in making the decision. The notice of the hearing will:

- include a statement of the date, time, place, and nature of the hearing which is always conducted in the appellant's county of residency;
- advises the appellant of the name, address, and phone number of the person to notify in the event it is not possible for him to attend;
- specifies that the hearing request will be dismissed if the appellant fails to appear for the hearing without good cause;
- specifies that the appellant may request a continuance of the hearing if good cause is shown;
- includes the appellant's rights, information, and procedures to provide the appellant, or representative with an understanding of the hearing process; and
- explains that the appellant may examine the case record prior to the hearing.

The Notice of Scheduled Hearing is sent out so that it reaches the appellant at least 10 days prior to the hearing.

10.2.8 Request for Continuance from the Appellant

A written request for a continuance is to be directed to the Hearings and Appeals Section. Good cause must exist for a continuance to be granted. Good cause is defined as a valid reason for the appellant's inability to be present at the scheduled hearing such as inability to attend the hearing because of a serious physical or mental condition, incapacitating injury, death in the family, severe weather conditions making it impossible to travel to the hearing, unavailability of a witness and the evidence cannot be obtained otherwise, or other reasons similar to those listed in this section. If good cause exists and a continuance is granted, the hearing is rescheduled.

10.2.9 Review of Action

When an appeal request is received, the Service Coordinator and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit should review the proposed action to determine whether the proposed action is appropriate.

The Service Coordinator and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit (or representative) must offer the individual (or representative) the possibility of an informal reconsideration conference. Individuals should be advised that an informal reconsideration conference is optional and in no way delays or replaces the administrative hearing. The conference may lead to an informal resolution of the dispute. An administrative hearing must still be held unless the individual (or representative) in writing withdraws the request for a hearing.

10.2.10 Disposal of Appeal Without a Fair Hearing

An appeal request may be disposed of without holding a fair hearing in the following situations:

- If, after review of the appellant's situation, the Service Coordinator and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit realizes that the proposed action or action taken is incorrect, then adjusting action may be taken. The appellant and the Hearings and Appeals Section are to be promptly notified in writing that the incorrect action is being withdrawn or rescinded.
- If the appellant wishes to withdraw the appeal, he/she is to be assisted by the Service Coordination and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit in promptly notifying the Hearings and Appeals Section in writing of the decision. No pressure is to be exerted on the appellant to withdraw the appeal. The withdrawal will be acknowledged in writing. The appeal is then dismissed.
- When the withdrawal of an appeal request is not submitted in writing, the Hearings and Appeals Section will

notify the parties that the appeal will be dismissed unless notification is received promptly that the appellant did not, in fact, withdraw the appeal request.

- An appeal is abandoned when the appellant (or representative) without good cause, does not appear at a scheduled hearing. The appeal will be dismissed and the appellant so notified.

10.2.11 The Fair Hearing

An administrative hearing is a review of an action(s) taken by a Service Coordinator and/or a Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit regarding issues relating to the DD Waiver. An Administrative Law Judge, who is an employee of the Family and Social Services Administration, Hearings and Appeals Section, is designated to hold the hearing and to issue findings of fact, conclusions of law, and a decision related to the appeal request.

A hearing allows the dissatisfied appellant an opportunity to present his/her grievance and to describe the circumstance and needs in his/her own words. The individual may be represented by an attorney or another individual of his choice. The Service Coordinator and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit (or representative) will attend the hearing and present evidence supporting the action under appeal.

10.2.12 Preparation for Hearing by Appellant

As the appellant prepares for the hearing, the appellant (or representative) is to be given an opportunity to:

- Discuss the issue being appealed with the Service Coordinator and/or Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit (or representative).
- Examine the entire case file and all documents and records that will be used by the Service Coordinator and/or Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit at the hearing.

- Obtain free of charge copies of all exhibits that will be used as evidence by the Service Coordinator and/or Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit at the hearing.
- The appellant is to be advised of any legal services available that can provide representation at the hearing.

10.2.13 Preparation for Hearing by the Service Coordinator and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit

The correct application of federal or state law or regulation to the appellant's situation should be reviewed by the Service Coordinator and/or the Targeted Case Manager of the Office of Medicaid Policy and Planning Level of Care Unit prior to the hearing. Thorough support of the action proposed or taken must be provided at the hearing.

The person testifying should be the person with the most direct contact with the action being proposed or taken. In the absence of the person with the most knowledge of the hearing situation, a person familiar with the action and the case record should substitute.

To prepare for the hearing, the Service Coordinator and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit is to:

- Review all factors and issues that led to the action being appealed;
- Discuss the issue being appealed with the appellant (or representative) if at all possible, and definitely if a discussion is requested by the appellant. If requested, allow the appellant (or representative) to examine the entire case record;
- Identify and label all documents that are pertinent to the issue under appeal and label them. The exhibits should be labeled in the lower right hand corner with the State's Exhibit being Exhibit A. If more than one page is in an exhibit, the pages are labeled (for the first page) State's Exhibit A, page 1 of 2; and (for page 2) State's Exhibit A, page 2 of 2. The next

numbers continue for each page in the exhibit being presented. The subsequent exhibit would be labeled Exhibit B and the pages according to the number of pages. Example [If three pages are in an exhibit, the third page would be labeled]:

State's Exhibit A
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- Make one copy of labeled exhibits for the Administrative Law Judge and one copy for the appellant (unless already given to the appellant). A duplicate copy of the notice sent to the appellant advising of the proposed action should be included as part of the documentation;
- Prepare a written outline that can be used as a tool in presenting the testimony at the hearing. Bear in mind when preparing the outline that the Administrative Law Judge knows nothing about the situation. The outline should focus on:
 - identification of the staff representative by name and position;
 - the period of time the representative worked directly or indirectly with the appellant;
 - one sentence explanation of the issue under appeal;
 - the important information concerning how it was determined that the action proposed or taken was appropriate; and
 - federal and state laws and regulations that were the basis for the action.
- Include the labeled exhibits at the appropriate point in the presentation outline.

10.2.14 Conduct of the Hearing

The Administrative Law Judge conducts the hearing. Both the appellant and the Service Coordinator and/or the Targeted Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit have the opportunity to:

- Present the case or have it presented by legal counsel or another person;
- Present testimony of witnesses;
- Introduce relevant documentary evidence;
- Establish all pertinent facts and circumstances;
- Present any arguments without interference;
- Question or refute any testimony or evidence presented by the other party, including the opportunity to confront and cross-examine any adverse witnesses; and
- Examine the appellant's entire case record and all documents and records used by the Service Coordinator and/or the Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit at the hearing.

The parties are advised at the close of the hearing that they will be informed in writing of the Administrative Law Judge's decision.

10.2.15 Responsibility of the Service Coordinator and/or the Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit at the Hearing

At the hearing, the Service Coordinator and/or the Case Manager or the Office of Medicaid Policy and Planning Level of Care Unit (or representative) is to:

- Present the testimony according to the outline prepared prior to the hearing;
- Limit remarks to facts (not speculation or guessing);
- Avoid the use of jargon;
- Offer labeled exhibits into evidence at appropriate points in the testimony and explain what they are and how they relate to the issue;

- Offer the labeled exhibits to the appellant (or representative) for examination and objections (if any); and
- Come to the hearing prepared to question the appellant about any statements that need further explanation.

10.2.16 Continuance of Hearing

If the Administrative Law Judge determines that further evidence is needed to reach a decision, the decision is delayed until such further evidence is obtained. The hearing may also be reconvened, if necessary, to obtain additional testimony. The parties will be notified of this and of the time and method for obtaining this evidence. Any evidence submitted must be copied and given to the opposite party, who then has the opportunity for rebuttal.

10.2.17 The Hearing Record

The hearing record is an official report containing the transcript or recording of the testimony of the hearing, together with all papers and requests filed in the proceeding, and the decision of the Administrative Law Judge.

10.2.18 The Fair Hearing Decision

A written copy of the Administrative Law Judge's hearing decision is sent to all parties. The decision includes:

- The findings of fact and conclusions of law regarding the issue under appeal; and
- Supporting laws and regulations.

In all cases the decision of the Administrative Law Judge is based solely on the evidence introduced at the hearing and the appropriate federal and state laws and regulations. The Administrative Law Judge signs the decision which also contains the findings of fact and the conclusions of law. The decision is to be explained to the appellant upon request.

10.2.19 Actions of the Administrative Law Judge's Decision

The decision of the Administrative Law Judge shall be binding upon the Division of Disability, Aging, and Rehabilitative Services or the Office of Medicaid Policy and Planning and is to be enacted even if one of the parties requests an Agency Review. Such decisions do not preclude modifying changed conditions subsequent to the original appeal request as long as the change does not relate to the issue under appeal.

10.2.20 Agency Review

Any party may request an Agency Review if dissatisfied with the decision made by the Administrative Law Judge. The Agency Review request must be made in writing to the Family and Social Services Administration, Hearings and Appeals Section, within 10 days following receipt of the hearing decision.

Once an Agency Review is requested, the Hearings and Appeals Section will write to all parties to acknowledge receipt of the request and to provide information concerning the review.

No new evidence will be considered during the Agency Review; however, any party may submit a written Memorandum Of Law , citing evidence in the record, for consideration.

The agency review shall be completed by the Secretary of the Family and Social Services Administration or the Secretary's designee. The decision made at Agency Review will be sent to all appropriate parties.

10.2.21 Judicial Review

The appellant, if not satisfied with the final action, may file a petition for judicial review in accordance with IC 4-21.5-5.

10.2.22 Lawsuits

If a lawsuit is filed, the DDARS District Manager should direct all inquiries to the FSSA Office of General Counsel.

10.3 APPEAL TRACK FOR STATE FUNDED DEVELOPMENTAL DISABILITIES SERVICES ACTIONS

The hearing authority for state funded developmental disability services actions is governed by IC 4-21.5, the Indiana Administrative Orders and Procedures Act (AOPA).

An individual must make an appeal request in writing by sending a Request for Administrative Review form to the Director of the Division of Disability, Aging, and Rehabilitative Services, 402 W. Washington Street, Room 451, Mail Stop 26, Indianapolis, Indiana 46404. In the absence of the form, any written request for an appeal shall be accepted.

10.3.1 Assistance in Exercising the Right to Appeal

Any applicant for services or any individual receiving services via state funds with the Bureau of Developmental Disabilities Services who is dissatisfied with an action may request a fair hearing. Any time an individual expresses a disagreement with any action taken, he/she must be verbally reminded of the right to request a fair hearing. Assistance is to be provided to the individual who is having difficulty in preparing the written request for an appeal.

The individual is to be informed that he/she may represent himself/herself at the hearing or be represented by an attorney, a relative, a friend, or any other spokesman of his/her choice. Information and referral services should also be provided to help the dissatisfied individual make use of any free legal services that are available in the community.

10.3.2 Appealable Actions

Under IC 4-21.5-2 appealable actions are issues relating to developmental disability eligibility; an individual community living budget (ICLB) pertaining to residential living allowance (RLA) and start up funds only; and Title XX sheltered work.

10.3.3 Time Limits for Requesting Appeals

Appeals must be filed within 15 days of the date of the action or issue being appealed.

An Administrative Law Judge will be assigned to hear the appeal by the Program Director acting as proxy for the Director of the Division of Disability, Aging, and Rehabilitative Services. The Administrative Law Judge shall schedule the hearing at the convenience of all parties.

Each appeal shall be assigned a sequential case number by district and by quarter and the fiscal year (i.e. D2-01-01) and logged into the appeals database.

10.3.4 The Hearing Notice

The Administrative Law Judge for the hearing shall set the time and place of the hearing and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. Unless a shorter notice is required to comply with any law or is stipulated by all parties and persons filing written requests for intervention, an agency shall be given at least 5 days notice of the hearing.

The notice scheduling the hearing must include:

- a copy of any prehearing order rendered in the matter;
- the names and mailing addresses of all parties and other persons to whom notice is being given by the Administrative Law Judge;
- the name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached;
- the official file or other reference number, the name of the proceeding, and a general description of the subject matter;
- a statement of the time, place, and nature of the hearing;

- a statement of the legal authority and jurisdiction under which the hearing is to be held;
- The name, official title, and mailing address of the Administrative Law Judge and a telephone number through which information concerning hearing schedules and procedures may be obtained; and
- A statement of the issues involved and, to the extent known by the Administrative Law Judge, of the matters asserted by the parties.

10.3.5 Pleadings, Motions, Objections, and Offers of Settlement

The Administrative Law Judge, at appropriate stages of a proceeding, shall give all parties full opportunity to file pleadings, motions, and objections and submit offers of settlement.

- The Administrative Law Judge, at appropriate stages of a proceeding, may give all parties full opportunity to file briefs, propose findings of fact, and propose orders.
- A party shall serve copies of any filed item on all parties.
- The Administrative Law Judge shall serve copies of all notices, orders, and other papers generated by the Administrative Law Judge to all parties.

10.3.6 Review of Action

When an appeal request is received, the Service Coordinator should review the proposed action to determine whether the proposed action is appropriate.

The Service Coordinator must offer the individual (or representative) the possibility of an informal reconsideration conference. Individuals should be advised that an informal reconsideration conference is optional and in no way delays or replaces the administrative hearing. The conference may lead to an informal resolution of the dispute. An administrative hearing must still be held unless the individual (or representative) in writing withdraws the request for a hearing.

10.3.7 The Hearing

An administrative hearing is a review of an action(s) taken by a Service Coordinator regarding issues relating to state funded Developmental Disabilities Services benefits. An Administrative Law Judge, is designated to hold the hearing and to issue findings of fact, conclusions of law, and a decision related to the appeal request.

A hearing allows the dissatisfied appellant an opportunity to present his/her grievance and to describe his/her circumstance and needs in his/her own words. An attorney, or another individual of their choice may represent the individual. The Service Coordinator will attend the hearing and present evidence supporting the action under appeal.

10.3.8 Preparation for Hearing by Appellant

As the appellant prepares for the hearing, he /she (or representative) is to be given an opportunity to:

- Discuss the issue being appealed with the Service Coordinator.
- Examine the entire case record and all documents and records that will be used by the Service Coordinator at the hearing.
- Obtain free of charge copies of all exhibits that will be used as evidence by the Service Coordinator at the hearing.
- The appellant is to be advised of any legal services available that can provide representation at the hearing.

10.3.9 Preparation by the Service Coordinator for a Hearing

The Service Coordinator prior to the hearing shall review the correct application of state law or regulation to the appellant's situation. Thorough support of the action proposed or taken must be provided at the hearing.

The Service Coordinator should be the person providing testimony at the hearing. In the absence of the Service Coordinator being present, a person familiar with the action and the case record should substitute.

To prepare for the hearing, the Service Coordinator is to:

- Review all factors and issues that led to the action being appealed;
- Discuss the issue being appealed with the appellant (or representative) if at all possible, and definitely if a discussion is requested by the appellant. If requested, allow the appellant (or representative) to examine the entire case record;
- Identify and label all documents that are pertinent to the issue under appeal and label them. The exhibits should be labeled in the lower right hand corner with the Bureau of Developmental Disabilities Services being Exhibit A. If more than one page is in an exhibit the pages are labeled (for the first page) Bureau of Developmental Disabilities Services Exhibit A, page 1 of 2, and (for page 2), Bureau of Developmental Disabilities Services Exhibit A, page 2 of 2. The numbers continue for each page in the exhibit being presented. The subsequent exhibit would be labeled Exhibit B and the pages according to the number of pages. Example [If three pages are in an exhibit, the third page would be labeled]:

Bureau of Developmental Disabilities Services Exhibit A
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- Make one copy of the exhibits for the Administrative Law Judge and one copy for the appellant (unless already given to the appellant). A duplicate copy of the notice sent to the appellant advising of the proposed action should be included as part of the documentation;
- Prepare a written outline that can be used as a tool in presenting the testimony of the Service Coordinator at the hearing. Bear in mind when preparing the outline that the Administrative Law Judge knows nothing about the situation. The outline should focus on:

- identification of the Service Coordinator by name and position;
 - the period of time the Service Coordinator worked directly or indirectly with the appellant;
 - one sentence explanation of the issue under appeal;
 - the important information concerning how the Service Coordinator determined that the action proposed or taken was appropriate; and
 - state laws and regulations that were the basis for the action.
- Evidence submitted for eligibility determination decisions shall include the following:
 - a copy of diagnostic information upon which eligibility determination has been based;
 - a copy of the eligibility statement;
 - a copy of the denial letter;
 - a copy of the policy and operational directive used to make the eligibility decision; and
 - any other pertinent information regarding the decision.

Include the labeled exhibits at the appropriate point in the presentation outline.

10.3.10 Conduct of the Hearing

The Administrative Law Judge governs the conduct of any hearing. The Administrative Law Judge:

- shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts.
- to the extent necessary for full disclosure of all relevant facts and issues, shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by limitations.

- May, after issuance of a prehearing order, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party.

The parties are advised at the close of the hearing that they will be informed in writing of the Administrative Law Judge's findings and decision on the appeal as soon as possible.

10.3.11 Service Coordinator's Responsibility at the Hearing

At the hearing the Service Coordinator is to:

- Present the testimony according to the outline prepared prior to the hearing;
- Limit remarks to facts (not speculation or guessing);
- Avoid the use of jargon;
- Offer labeled exhibits into evidence at appropriate points in the testimony and explain how these exhibits relate to the issue;
- Offer the labeled exhibits to the appellant (or representative) for examination and objections (if any); and
- Come to the hearing prepared to question the appellant about any statements that need further explanation.

10.3.12 The Hearing Record

The hearing record is an official report containing the transcript or recording of the testimony of the hearing, together with all papers and requests filed in the proceeding, and the decision of the Administrative Law Judge.

10.3.13 The Hearing Order

The Administrative Law Judge shall make a non-final written Order based upon relevant Indiana Code and the evidence

of record in the proceeding. The Administrative Law Judge shall issue an Order including, separately stated, the findings of fact for all aspects of the Order and the prescribed remedy. The Administrative Law Judge shall have copies of the Order delivered to each party and to the Director of the Division of Disability, Aging, and Rehabilitative Services. The findings of fact shall be accompanied by a concise statement of the underlying facts of the record to support the findings. The Order shall also include a statement regarding the process for further appeal of the Order and the time frame for seeking Administrative Review of the Order. The findings shall be sent to all parties and the Deputy Director of the Division of Disability, Aging, and Rehabilitative Services within 90 days of the conclusion of the hearing or after the submission of the proposed findings. The time period may be waived or extended with the written consent of all parties or for good cause shown.

10.3.14 Objection to Non-Final Order

If the appellant is dissatisfied with the non-final Order issued by the Administrative Law Judge, the appellant may appeal to the Director of the Division of Disability, Aging, and Rehabilitative Services in writing within 15 days of the non-final Order.

If the Bureau of Developmental Disabilities Services is dissatisfied with the non-final Order, an objection may be filed in writing to the Director of the Division of Disability, Aging, and Rehabilitative Services within 15 days of the non-final Order.

10.3.15 Responsibility of the Director of the Division of Disability, Aging, and Rehabilitative Service when Objections are Filed

If an Objection is filed, the Director of the Division of Disability, Aging, and Rehabilitative Services shall conduct proceedings to issue a final Order. In these proceedings the Director shall give each party an opportunity to present further arguments. The Director may:

- give each party the opportunity to provide oral arguments;

- have a transcript prepared of any portion of the record of a proceeding that the Director considers necessary;
- exercise the powers of an Administrative Law Judge; or
- allow non-parties to participate in a proceeding.

In reviewing a non-final Order, the Director of the Division of Disability, Aging, and Rehabilitative Services shall base the decision on the evidence in the record. The Director of the Division of Disability, Aging, and Rehabilitative Services shall issue an Order affirming, modifying, or dissolving the Administrative Law Judge's Order. The Director may remand the matter, with or without instructions, to the Administrative Law Judge for further proceedings.

10.3.16 Responsibility of the Director of the Division of Disability, Aging, and Rehabilitative Services when No Objections are Filed

If no Objection is filed, the Director of the Division of Disability, Aging, and Rehabilitative Services may serve written notice of intent to review any issue related to the non-final Order of the Administrative Law Judge. The notice shall be served on all parties and must identify the issues that the Director intends to review. In reviewing a non-final Order, the Director of the Division of Disability, Aging, and Rehabilitative Services shall base the decision on the evidence in the record.

10.3.17 Final Order

If no Objection or notice of intent to review is filed, the Director of the Division of Disability, Aging, and Rehabilitative Services will affirm the non-final Order of the Administrative Law Judge as the agency's final Order. A final Order shall be issued by the Director of the Division of Disability, Aging, and Rehabilitative Services within 60 days after the latter of:

- the date the Administrative Law Judge's Order was issued;
- the receipt of written comments; or
- the close of oral arguments.

The final Order shall identify any difference between the final Order and Order issued by the Administrative Law Judge which includes findings of fact or incorporates the findings of fact in the Administrative Law Judge's Order.

10.3.18 Judicial Review

If an individual is not satisfied with the Final Order issued by the Director of the Division of Disability, Aging, and Rehabilitative Services, the individual may file a petition for judicial review in accordance with IC 4-21.5-5.

10.3.19 Lawsuits

If a lawsuit is filed, the Bureau of Developmental Disabilities Services District Manager should direct all inquiries to the FSSA Office of General Counsel.